

EMPLOYMENT AGREEMENT BUY-OUT AND GENERAL RELEASE

THIS EMPLOYMENT AGREEMENT BUY-OUT AND GENERAL RELEASE (the “Agreement”) is entered into by and between the Town of Whitestown (“Town”) and Dennis Anderson (“Employee”) (jointly, the “Parties”).

Recitals

A. Employee has served the Town with distinction since 2008, as its first Chief of Police and Chief Public Safety Officer.

B. The Parties entered into a Chief of Police Employment Agreement on or about August 22, 2018, concerning the employment of Employee for a term ending on December 31, 2020 (“Employment Agreement”).

C. The Parties are thankful for their relationship over the past 12 years and are proud of their mutual accomplishments.

D. The Parties now believe that the timing is conducive to transitioning to the new Chief of Police for the Town, and desire to provide for the buy-out and termination of the Employment Agreement in a manner that is mutually beneficial under certain terms as set forth in this Agreement.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. Last Date of Employment and Final Payment. Employee’s employment with the Town will terminate effective July 1, 2020 (“Separation Date”). On or before the Town’s next regularly scheduled pay date following the Separation Date, the Town will pay Employee for all base salary earned through and including the Separation Date, subject to applicable taxes and withholdings (“Final Payment”).

2. Buy-Out. Subject to the Contingencies (as defined in Section 7(c) herein) and in consideration for the promises made by Employee in this Agreement, the Town shall pay Employee the gross amount of Fifty Eight Thousand Nine Hundred Seventy-Seven Dollars and Thirty-Six Cents (\$58,977.36), which is equivalent to the remainder of Employees base salary for 2020 and one-half of all of Employee’s earned and unused vacation, holiday, and personal or family leave time, to be paid out in a lump-sum payment within ten (10) days following the Effective Date of this Agreement (as defined in Section 17 of this Agreement), subject to all applicable taxes and withholdings (“Buy-Out Payment”).

3. Complete Payment. The Final Payment and the Buy-Out Payment shall constitute a complete settlement and satisfaction of any and all present or potential claims for loss of wages/salary,

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including any and all forms of compensation, commissions, bonuses, and benefits of employment, reinstatement, severance pay, compensatory damages, punitive damages, declaratory relief, interest, attorneys' fees, costs, other litigation fees, and any and all other forms of monetary or injunctive relief. Employee hereby expressly acknowledges payment in full by the Town of any and all earned and unpaid compensation and benefits (including paid time off benefits) as of the date Employee signs this Agreement. Apart from the Buy-Out Payment (subject to the terms and conditions herein), the Town shall have no continuing liability to Employee for any compensation, commissions, bonuses or benefits of employment.

4. Benefits. Any entitlement to retirement benefits by Employee based on Employee's age and years of service with the Town shall be unaffected by this Agreement except to the extent such benefits are affected by Employee's Separation Date. All employment-related benefits shall terminate on the Separation Date unless otherwise provided in the specific benefits plan documents, specified in this Agreement, or required by law. Employee shall not be entitled to any Town-matching or contributions to any retirement plans or other benefits plans based on the Buy-Out Payment.

5. Release and Claims. In consideration of the promises made by the Town in this Agreement, Employee hereby RELEASES AND FOREVER DISCHARGES the Town and its elected officials, officers, agents, employees, subsidiaries, affiliates, successors, and assigns (collectively the "Released Parties") from any and all claims, demands, liabilities, actions, or causes of action which Employee had, has, or may have on account of, arising out of, or related to: (a) Employee's employment with the Town and the termination of that employment, including, without limitation, any and all claims, demands, liabilities, actions, or causes of action arising under Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act; Sections 1981 through 1988 of Title 42 of the United States Code; the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974; the Americans with Disabilities Act; the Occupational Safety and Health Act; the Lilly Ledbetter Fair Pay Act; the Equal Pay Act; the Indiana Civil Rights Act; Indiana's payment-of-wages statutes; and any amendments thereto; and any and all other federal, state and local laws governing terms and conditions of employment, wages, hours, compensation, discrimination, and any and all other matters; (b) the Employment Agreement; and (c) all other matters occurring prior to the date Employee signs this Agreement. **Employee is releasing each and every claim, known or unknown, contingent or actual, which Employee has or may have against the Released Parties, or any of them, as of the date Employee signs this Agreement, which may lawfully be released by private agreement. The foregoing release does not extend to claims that cannot lawfully be released by private agreement, nor does it restrict Employee's right to file a charge with any administrative or government agency or participate in an administrative or government agency investigation or proceeding; provided, however, that by signing this Agreement, Employee understands and agrees that, in the event that Employee files any charge or claim against the Released Parties, or any of them, this Agreement may operate to limit or preclude Employee's entitlement to relief or recovery from such claim, including any costs or attorneys' fees.**

6. Covenant Not to Sue. Employee promises and agrees not to file a lawsuit against the Released Parties, or any of them, with respect to any claim or cause of action released in this

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Agreement. In the event that Employee violates this covenant, Employee understands and agrees that any such claim will be subject to dismissal with prejudice and further agrees to reimburse the Released Parties for their attorneys' fees and costs incurred to secure such dismissal.

7. Return of Town Property and Confidentiality.

(a) Within thirty (30) days after the Separation Date, Employee will return all Town-owned electronic equipment, laptop computer, cell phone, all key fobs and keys, fuel card, badges, documentation, information, reports, files, memoranda, records, identification, hardware, and software, and other physical or personal property of any nature that Employee received, prepared or helped prepare in connection with Employee's employment with the Town ("Town Information/Property") and on or before the Separation Date will disclose to the Town all Town-related passwords and access codes; provided, however, that the Town will transfer ownership of Employee's Town-issued firearm to Employee in recognition of Employee's years of service. Employee expressly agrees that Employee will not retain any copies, duplicates, reproductions, or excerpts of any such Town Information/Property in any form. Town Information/Property includes financial, accounting, customer account, contracts, negotiations, technical, grant, sales, leasing, marketing, advertising, media relations, research, risk management, fund raising, proprietary or human resource information; software; and trade secrets of any nature; the use or disclosure of which might be adverse to the best interests of the Town or its business. Employee shall keep such information confidential at all times following the Separation Date, not disclose or communicate such information to any third party, and not make any use of such information on Employee's own behalf or that of any third party, unless ordered to do so by a court of law. The foregoing is not intended to prevent Employee from using or exercising the skill and general knowledge Employee has acquired or increased through Employee's experience or instruction at the Town that does not entail use of Town Information/Property.

(b) Pursuant to the federal Defend Trade Secrets Act, the Parties acknowledge and agree that Employee is immune from criminal and civil liability under state and federal law if Employee discloses trade secrets (i) directly or indirectly in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of the law, (ii) in a complaint or other document filed in a lawsuit or other proceeding when the filing is made under seal, or (iii) to Employee's attorney or in a sealed court filing in a lawsuit alleging retaliation for reporting a suspected violation of the law.

(c) The Town's obligation to pay the Buy-Out Payment to Employee is contingent upon: (i) Employee executing and not revoking this Agreement, (ii) ratification of this Agreement by the Whitestown Town Council, and (iii) Employee's compliance with the terms and conditions of this Agreement. The obligations contained in this subsection 7(c) of this Agreement are jointly referred to as the "Contingencies".

8. Non-Disparagement. Employee specifically understands and agrees that Employee shall not disparage, demean, or otherwise communicate any information damaging or potentially damaging to the business or reputation of the Town or any of the Released Parties to any third party,

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including, but not limited to, the media and business community and any past or present employees of the Town, without the express written consent of the Town, except as protected by applicable law.

9. Breach by Employee. Employee understands and agrees that a breach by Employee of any provision of this Agreement permits the Town to not pay the Buy-Out Payment and permits the Town to pursue any other legal or equitable relief to which it is entitled as the result of such breach. Employee also understands and agrees that, in the event Employee were to violate Section 7 or 8 of this Agreement, the Town and/or Released Parties would be subject to immediate and irreparable harm, and that such breach by Employee would entitle the Town and/or Released Parties to receive temporary, preliminary, and/or permanent injunctive relief. Employee further understands and agrees that Employee will be responsible for payment of the Town's and other Released Parties' attorneys' fees and costs incurred as a result of a successful effort to pursue legal action against Employee in connection with any breach of this Agreement.

10. No Knowledge of Wrongdoing. Employee affirmatively acknowledges that Employee is not aware of any policies, practices, statements, or conduct on the part of any of the Released Parties that Employee believes constitutes illegal, unethical, legally noncompliant, false, or fraudulent acts or omissions that have not been previously disclosed to Town. Employee agrees that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by any of the Released Parties of any liability or unlawful conduct of any kind.

11. Consulting. As additional consideration under the Agreement, Employee agrees to provide consulting service and assistance to the new Whitestown Police Chief and the Town from time to time upon reasonable request from Police Chief or Town, at no charge, to aid in the transition of the Department. Employee shall not be obligated to provide such service or assistance after December 31, 2020, though Employee may still volunteer to do so after such date.

12. Entire Agreement. This Agreement sets forth the entire agreement between Employee and the Town with regard to Employee's termination of employment and fully supersedes any prior agreements or understandings between the Parties with regard to the same subject. The Employment Agreement is terminated, and the Town shall have no further obligations under the Employment Agreement. Employee acknowledges that Employee has not relied on any representations, promises, or agreements of any kind made to Employee in connection with Employee's decision to sign this Agreement, except for those set forth in this Agreement. This Agreement may not be modified, altered, or changed except upon the express written consent of both Parties in which specific reference is made to this Agreement.

13. Counterparts and Severability. This Agreement may be executed in one or more counterparts, each of which (including a facsimile or pdf attachment to email thereof) shall be deemed an original, but which together shall constitute one and the same instrument. The facsimile or pdf shall be admissible in any legal proceedings as if it were a manually signed original. Each provision and individual covenant of this Agreement is severable. If any court or other governmental body of competent jurisdiction shall conclude that any provision or individual covenant of this Agreement is

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invalid or unenforceable, such provision or individual covenant shall be deemed ineffective to the extent of such unenforceability without invalidating the remaining provisions and covenants hereunder.

14. Successors are Bound. Each of the agreements and promises contained in this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, executors, administrators, agents, and successors in interest to each of the Parties.

15. Headings. The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference and, in the event of any conflict, the text of this Agreement, rather than the headings, will control.

16. Choice of Law and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Indiana. Exclusive jurisdiction and venue over any and all disputes arising out of or in connection with this Agreement shall be in Boone County, Indiana, or in the federal district court responsible for Boone County, Indiana.

17. Right to Revoke for Seven (7) Days After Signing and Effective Date. Employee may revoke this Agreement by giving written notice of such revocation to the Town at any time prior to seven (7) days following the date this Agreement is signed by Employee, and this Agreement shall not become effective or enforceable until the end of such revocation period ("Effective Date").

18. Review Period and Acknowledgment of Rights and Understandings. Employee expressly agrees and acknowledges the following: (a) that Employee understands the terms and conditions of this Agreement; (b) that Employee has knowingly and voluntarily entered into this Agreement; (c) that Employee has been advised in writing to consult an attorney in connection with reviewing and entering into this Agreement; (d) **that Employee has been provided this Agreement on June 20, 2020 and has been given twenty-one (21) days (i.e., until July 10, 2020) to review and consider the original draft of this Agreement before signing this Agreement;** and (e) that this Agreement, when signed by the Town and Employee, is legally binding upon both the Town and Employee, as well as their heirs, assigns, executors, administrators, agents, successors in interest, even if Employee decides not to consult with an attorney in connection with reviewing and entering into this Agreement or if Employee fails to utilize the full twenty-one (21) days given Employee for this purpose.

19. Twenty-One (21) Day Review Period Not Increased by Changes. Employee agrees that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the original twenty-one (21) day consideration period set forth in Section 18 of this Agreement.

The remainder of this page is intentionally left blank and the signature page follows:

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WHEREFORE, intending to be legally bound to each and all of the terms of this Agreement, the Parties hereby execute this Agreement this ____ day of _____ 2020.

DENNIS ANDERSON

TOWN OF WHITESTOWN

Signature:

Signature:

Printed Name

Printed Name

“Employee”

“Town”

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